

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 2:16CR3KS-MTP

KENNETH E. FAIRLEY, SR.

**MOTION FOR THE PRODUCTION
OF EXCULPATORY EVIDENCE**

NOW COMES the Defendant, Kenneth Fairley Sr., in the above-captioned cause of action, and respectfully requests this Honorable Court to order the United States Attorney for the Southern District of Mississippi Eastern Division to reveal and produce the following:

I.

1. The physical or tangible objects in the possession of the United States Attorneys or their agents which may be relevant to the guilt or innocence of the Defendant.
2. Any and all exculpatory documents or records of any kind which, in any way, reveal files associated with Pinebelt Community Services produced by City of Hattiesburg Director of the Department of Federal and State Grants, LeKeylah White, to the HUD Office of Inspector General. This request is pursuant to a memorandum of activity report authored by Special Agent Robert Weeks of the HUD OIG as reported on April 13, 2015. This report was produced for the first time to Defense Counsel on September 4, 2016 and attached hereto as **Exhibit 1**.

3. Any and all exculpatory evidence which the United States Attorneys and their agents may have in their files related to and including but not limited to recorded conversations and emails between Kenneth Fairley and Johnny Dupree. This request is pursuant to the Memorandum of Interview of Artie Fletcher authored by Special Agent Robert Weeks as reported on April 16, 2014, attached hereto as **Exhibit 2**.
4. Any and all exculpatory evidence which the United States Attorneys and their agents may have in their files related to and including but not limited to recorded conversations, plea agreements, and documents between Kenneth Fairley and Artie Fletcher. This request is pursuant to Federal Bureau of Investigation reports authored by Agent David L. Roncska and drafted on June 17, 2014. These documents were produced to Defense Counsel for the first time on September 4, 2016 and are attached hereto as **Exhibits 3 and 4**.

II.

The government has a legal obligation to disclose exculpatory evidence and information to the accused and his defense attorney. Courts have opined that suppression of evidence favorable to a Defendant upon request violates due process, especially where, as is the case here, evidence is material. The United States Attorney, in the instant case, never informed Defense Counsel of existing memorandum from agents involved in this matter. Furthermore, Defense Counsel was never made aware that the Co-Defendant in these proceedings; Mr. Artie Fletcher was working as a cooperative informant for the United States throughout the duration of this investigation. The suppression of this critical fact has deprived the Defendant of his due process rights. Numerous meetings took place with Artie Fletcher where, through his representative, he was able to learn and report to the United States Attorney the Defense strategy. Defense Counsel for Kenneth

Fairley was completely unaware that Artie Fletcher was a cooperative informant for the United States. Reports disclosed for the first time as recently as September 4, 2016 to Defense Counsel revealed that Artie Fletcher was an informant for the United States Government even while he stood accused in the indictment as a co-defendant in this matter.

Defense Counsel is prepared to show this Honorable Court that the failure to produce the above-requested evidence would result in the suppression of evidence and a violation of the United States Constitution, Amendments V, VI, and XIV. See *Kyles v. Whitley*, 514 U.S. 419, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995); *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963); *Ashley v. Texas*, 319 F. 2d 80 (5th Cir. 1963).

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully prays that this Court grant this Motion and all relief requested within.

RESPECTFULLY SUBMITTED this the 5th day of September, 2016.

/s/ Bertram L. Marks

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CERTIFICATE OF SERVICE

Counsel for Defendant, do, hereby, certify that I have on this date mailed via, United States Postal Services, postage prepaid, a true and correct copy of the foregoing document to the following:

Jay Golden, Esquire
Office of the U.S. Attorney
501 E. Court Street, Suite 4.430
Jackson, Mississippi 39201

This the 5th day of September, 2016.

/s/ Bertram L. Marks
Bertram L. Marks, P47829 PHV
Attorney for Defendant